EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BLAKE J. ROBBINS, et al.

Plaintiffs,

and

EVAN A. NEILL, RICHARD A. NEILL, and ELAINE LOUISE REED,

Plaintiff-Intervenors,

v.

LOWER MERION SCHOOL DISTRICT, et al.

Defendants.

Civil Action No. 10-665

COMPLAINT IN INTERVENTION

The Neill Family brings this action – seeking solely equitable relief and no monetary damages – to permanently enjoin defendant Lower Merion School District (the "District") from invading their privacy by remotely accessing a laptop computer that the District issued to Evan Neill, a student at Harriton High School. The Neill Family also seeks to prevent the parties to the action from exacerbating the invasions of privacy already committed by establishing a mechanism to ensure that the fruit of the District's past illegal searches is disclosed only to those whose privacy was invaded by any given search.

PARTIES

1. Plaintiff-Intervenor Evan Neill is a resident of the Commonwealth of Pennsylvania who resides at 24 Narbrook Park, Narberth, Pennsylvania.

2. Plaintiff-Intervenor Dr. Richard A. Neill is a resident of the Commonwealth of Pennsylvania who resides at 24 Narbrook Park, Narberth, Pennsylvania.

3. Plaintiff-Intervenor Dr. Elaine Louise Reed is a resident of the Commonwealth of Pennsylvania who resides at 24 Narbrook Park, Narberth, Pennsylvania.

4. Evan Neill is the son of Richard Neill and Elaine Louise Reed (collectively, the "Neill Family").

JURISDICTION AND VENUE

5. Pursuant to 28 U.S.C. § 1331, this Court has original jurisdiction over the claims in this action that arise under the laws of the United States.

6. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over all other claims in this action that form part of the same case or controversy as the claims within the Court's original jurisdiction.

7. Pursuant to 28 U.S.C. § 1391(b) and (c), venue is proper in this District because defendants reside in this district.

THE RELEVANT FACTS

THE LAPTOPS

8. In the Fall of 2008 the District began issuing laptop computers to all students at Harriton High School. The District has continued to provide Harriton students with laptops through the present.

9. The District permitted Harriton students to take the laptops off of school property, provided they paid an insurance fee.

10. Evan Neill received a laptop from the District in the Fall of 2008, when he began his junior year at Harriton. He returned the laptop to the District at the conclusion of the 2008-2009 school year, as required. Evan again received a laptop from the District in the Fall of 2009, when he began his senior year at Harriton. The Neill Family paid the insurance fee in both 2008 and 2009. Evan continuously possessed and used the laptop both on and off the Harriton campus during the 2008-2009 and 2009-2010 school years.

11. Evan regularly used the laptop in the house in which he resides with his parents. He generally left the laptop open, running and connected to the internet through the wireless network in the Neill's home. Evan primarily used the laptop in his personal bedroom, but occasionally moved the laptop into other rooms in the house that he shared with the rest of the Neill Family.

THE TRACKING SYSTEM

12. The laptops issued by the District came pre-installed with a camera ("webcam") that, when in operation, was capable of taking still or video images of everything within its field of view.

13. The District utilized software called LANrev, which enabled the District to access the laptops it issued, regardless of their physical location, as long as they were connected to the internet.

14. When activated in connection with any given laptop, LANrev would instruct the webcam to periodically photograph whatever appeared in front of it and/or would capture images of whatever appeared on the laptop's screen ("screen shots") and transmit that data to the District.

15. The District never informed the Neill Family that the District had the ability to remotely access the laptops. In fact, the user agreement that the District required the Neill Family to sign contained no mention of the District's ability to remotely access the laptops.

THE UNDERLYING ACTION

16. On February 16, 2010, Harriton student Blake Robbins and his parents (the "Robbins Family") filed the underlying lawsuit alleging, among other things, that the District activated the tracking system and obtained photographs of Blake while he was using his school-issued laptop in his home. *See generally* Complaint (Docket No. 1).

17. The District has admitted that it activated the tracking system at least forty-two times during the 2009-2010 school year alone.

18. The District claims that it only activated the tracking system when it suspected that a laptop was lost, stolen or missing.

19. On information and belief, Blake Robbins never reported his laptop lost, stolen or missing.

20. On February 20, 2010, the Robbins Family and the District entered into a Stipulation, which was approved by the Court, pursuant to which the District agreed that it was prohibited, "during the pendency of this action," from "remotely activating any and all web cams embedded in lap top computers issued to students within the Lower Merion School District or from remotely taking screenshots of such computers." February 20, 2010 Stipulation and Order, ¶ 1 (Docket No. 11).

21. The Neill Family is not a party to the February 20, 2010 Stipulation.

22. In addition, the prohibitions in the February 20, 2010 Stipulation cease to have effect upon resolution of the Robbins' action.

23. In an update posted to its webpage on February 18, 2010, the District stated that it may activate the tracking system again in the future.

24. On March 10, 2010, the Robbins Family and the District entered into another Stipulated Order. In the March 10 Order, the parties noted that counsel for the Robbins Family and the District were engaged in discovery designed "to ascertain, among other things . . .

to what extent there exists evidence of the use of the laptop tracking software application (such as webcam photographs)." March 10, 2010 Stipulated Order, ¶ B (Docket No. 19).

25. Later filings by the parties indicate that the Robbins Family and the District are searching for, and intend to exchange with each other and with third parties, any images, whether still photographs, video clips or screen shots, collected by the District's tracking system. For instance:

(a) The Robbins Family has subpoenaed the production of "copies of any and all images obtained by the School District via the remote activation of webcams embedded in the Laptops" and "all streaming video, audio tracks and still video [the District] captured . . . depicting any student . . . from September 2008 to the present." Plaintiffs' Motion to Compel Appearance of Carol Cafiero, Ex. B, ¶¶ 2, 14 (Docket No. 20);

(b) The District has "collected, and [is] in the process of analyzing approximately nineteen terabytes of electronic data from District computer systems." Defendants' Response To Plaintiffs' Motion For An Extension Of Time To File A Response to Motion To Intervene, p. 2 (Docket No. 26);

(c) "The District is sharing relevant information with plaintiffs' counsel and [a] computer forensic specialist." *Id*;

(d) "[T]he District intends to make public the results of its comprehensive investigation." *Id*.

(e) "[C]ounsel will be exchanging the results of their investigation and conducting other discovery to hopefully determine the full extent of . . . pictures, screen shots, or other information obtained from use of the technology," which "discovery may reveal that the children of the Intervenors and/or the attorneys for Intervenors or family members are actually depicted in pictures or videos obtained from use of the web cams." Plaintiffs' Motion for Extension of Time to File A Response To Motion To Intervene, ¶¶ 3, 5 (Docket No. 25).

COUNT I

UNREASONABLE SEARCH IN VIOLATION OF 42 U.S.C. § 1983 AND THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION

26. The Neill Family repeats and re-alleges each allegation contained in paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. The Fourth Amendment of the Constitution of the United States guarantees the Neill Family freedom from government intrusion into their home.

28. The Neill Family has a reasonable expectation of privacy within their home.

29. The District, acting under color of state law, has used the tracking system to perform unreasonable searches of the homes of students and students' families in violation of the Fourth and Fourteenth Amendments to the Constitution.

30. The District activated the tracking system at least forty-two times during the 2009-2010 school year alone.

31. To the extent the District activated the tracking system on Evan Neill's laptop while the laptop was located in the Neill Family's home or any other location where the Neill Family had a reasonable expectation of privacy, those activations constituted searches under the Fourth Amendment of the United States Constitution.

32. The District did not request or receive the Neill Family's consent to search their home.

33. The District did not, on information and belief, obtain a warrant to conduct searches of the Neill Family's home.

COUNT II

INVASION OF PRIVACY IN VIOLATION OF
42 U.S.C. § 1983 AND THE UNITED STATES CONSTITUTION

34. The Neill Family repeats and re-alleges each allegation contained in paragraphs 1 through 33 of this Complaint as if fully set forth herein.

35. The United States Constitution guarantees the Neill Family a right of privacy, which right includes an interest in avoiding the disclosure of personal matters.

36. The Neill Family has a reasonable expectation of privacy within their home.

37. The District, acting under color of state law, has used the tracking system to unreasonably intrude into the homes of students and students' families and has disclosed the personal matters observed therein in violation of the United States Constitution.

38. The District activated the tracking system at least forty-two times during the 2009-2010 school year alone.

39. To the extent the District activated the tracking system on Evan Neill's laptop while the laptop was located in the Neill Family's home or any other location where the Neill Family had a reasonable expectation of privacy and then disclosed or may potentially disclose the personal matters observed therein, those activations and disclosures intruded upon the Neill Family's right to privacy under the United States Constitution.

40. The District did not request or receive the Neill Family's consent to intrude upon their privacy.

41. The District did not, on information and belief, obtain a warrant to intrude upon the Neill Family's privacy.

COUNT III

UNREASONABLE SEARCH IN VIOLATION OF
ARTICLE I, SECTION 8 OF THE PENNSYLVANIA CONSTITUTION

42. The Neill Family repeats and re-alleges each allegation contained in paragraphs 1 through 41 of this Complaint as if fully set forth herein.

43. Article I, Section 8 of the Pennsylvania Constitution guarantees the Neill Family freedom from unreasonable searches.

44. The Neill Family has a reasonable expectation of privacy within their home.

45. The District, acting under color of state law, has used the tracking system to perform unreasonable searches of the homes of students and students' families in violation of Article I, Section 8 of the Pennsylvania Constitution.

46. The District activated the tracking system at least forty-two times during the 2009-2010 school year alone.

47. To the extent the District activated the tracking system on Evan Neill's laptop while the laptop was located in the Neill Family's home or any other location where the Neill Family had a reasonable expectation of privacy, those activations constituted searches under Article I, Section 8 of the Pennsylvania Constitution.

48. The District did not request or receive the Neill Family's consent to search their home.

49. The District did not, on information and belief, obtain a warrant to conduct searches of the Neill Family's home.

COUNT IV

VIOLATION OF RIGHT OF PRIVACY UNDER ARTICLE I, SECTION 1 OF THE PENNSYLVANIA CONSTITUTION

50. The Neill Family repeats and re-alleges each allegation contained in paragraphs 1 through 49 of this Complaint as if fully set forth herein.

51. Article I, Section 1 of the Pennsylvania Constitution guarantees the Neill Family a right of privacy.

52. The Neill Family has a reasonable expectation of privacy within their home.

53. The District, acting under color of state law, has used the tracking system to unreasonably intrude into the homes of students and students' families and has disclosed the personal matters observed therein in violation of Article I, Section 1 of the Pennsylvania Constitution.

54. The District activated the tracking system at least forty-two times during the 2009-2010 school year alone.

55. To the extent the District activated the tracking system on Evan Neill's laptop while the laptop was located in the Neill Family's home or any other location where the Neill Family had a reasonable expectation of privacy and then disclosed or may potentially

disclose the personal matters observed therein, those activations and disclosures intruded upon the Neill Family's right to privacy under Article I, Section 1 of the Pennsylvania Constitution.

56. The District did not request or receive the Neill Family's consent to intrude upon their privacy.

57. The District did not, on information and belief, obtain a warrant to intrude upon the Neill Family's privacy.

COUNT V

DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. § 2201
(CONSTRAINTS ON USE OF TRACKING SYSTEM)

58. The Neill Family repeats and re-alleges each allegation contained in paragraphs 1 through 57 of this Complaint as if fully set forth herein.

59. Although the District has stipulated that it will not activate the tracking system "during the pendency of this litigation," the Neill Family is not a party to the stipulation and, as such, arguably would be unable to compel compliance with or seek sanctions for violations of the stipulation if the District failed to comply with it.

60. Moreover, the District has indicated that it may re-activate the tracking system in the future.

61. The District and the Neill Family have adverse legal interests with respect to the District's use of the tracking system.

62. A real and substantial legal controversy for which specific relief can be granted exists between the District and the Neill Family with respect to the constitutionality and propriety of the District's use of the tracking system.

63. The controversy between the District and the Neill Family affects the Neill Family in a concrete manner, as the District's continued use of the tracking system could violate the Neill Family's constitutionally-protected right to privacy, resulting in harm to the Neill Family.

64. The probability that the District will use the tracking system in the future is real and substantial. Indeed, the District purports to be seeking an expeditious resolution of the underlying action brought by the Robbins Family, which could result in termination of the stipulation pursuant to which it agreed to refrain from activating the tracking system. The District has indicated that it intends to re-activate the tracking system thereafter. Despite the District's representations to the contrary, the District has, on information and belief, previously activated the tracking system on laptops that it did not suspect were lost, stolen or missing.

65. A declaration prohibiting the District from using the tracking system in a manner that constitutes an unreasonable search of students and their families would be conclusive and would be of practical help to the parties as it would protect the Neill Family's constitutionally-protected right to privacy from unauthorized infringement and would provide the District with guidelines regarding the constitutionally-permissible use of the tracking system.

COUNT VI

DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. § 2201
(DISTRIBUTION OF THE FRUIT OF THE DISTRICT'S ILLEGAL SEARCHES)

66. The Neill Family repeats and re-alleges each allegation contained in paragraphs 1 through 65 of this Complaint as if fully set forth herein.

67. The District and the Robbins Family are presently searching for and intend to exchange with each other and with third parties the fruit of the District's illegal searches, including still photographs, video clips and screen shots collected by the District's tracking system.

68. Dissemination of still photographs, video clips or screen shots taken from Even Neill's laptop to anyone – agents of the District, its forensic experts, the Robbins Family, counsel for the parties, the press or the general public – would further compound any violation of the Neill Family's privacy.

69. The District and the Neill Family have adverse legal interests with respect to the dissemination of material collected by the District's tracking system.

70. A real and substantial legal controversy for which specific relief can be granted exists between the District and the Neill Family with respect to the dissemination of the fruit of the District's illegal searches.

71. The controversy between the District and the Neill Family affects the Neill Family in a concrete manner, as dissemination of the fruit of the District's illegal searches to any

persons other than those whose privacy was invaded by any given search might further infringe the Neill Family's privacy rights.

72. The probability that the District and/or the Robbins Family will disseminate the fruit of the District's illegal searches is real and substantial. Indeed, the District and the Robbins Family have admitted in filings with the Court that they are searching for and intend to share with one another and third parties the material collected by the tracking system. The District also intends to make public the results of its investigation.

73. A declaration prohibiting dissemination of the fruit of the District's illegal searches to any persons other than those whose privacy was invaded by any given search would be conclusive and would be of practical help to the parties as it could protect the Neill Family's right to privacy.

WHEREFORE, the Neill Family demands relief on their Complaint as follows:

a. An injunction permanently prohibiting the District from remotely accessing laptops in a manner that constitutes an unreasonable search of students and their families;

b. A declaration prohibiting the District, the Robbins Family and any other party to this action from disseminating the fruit of the District's illegal searches to any persons other than those whose privacy was invaded by any given search.

c. Such other relief as the Court deems just and proper.

Respectfully submitted,

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